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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-202921

DATE: October 9, 1981

MATTER OF: The Willard Company

**DIGEST:**

1. Protest of life cycle cost evaluation method, set forth in step two IFB is untimely where not filed prior to bid opening. While protester argues it was misled by step one request for technical proposals (RFTP) in designing container, assuming RFTP did mislead protester, IFB made clear the manner in which bids would be evaluated and, therefore, alleged impropriety was apparent from review of IFB.
2. Protest that cube dimensions should not have been used in evaluation under terms of solicitation need not be considered because even using protester's method of computation, protester's does not become low and, therefore, there was no prejudice.
3. Contention that cheaper surface transportation rates should have been used in evaluation rather than LOGAIR rates, is found to be without merit since agency has justified use of LOGAIR rates because of priority of program, RFTP alerted offerors to possibility of air shipping and all bids were evaluated using same formula.

The Willard Company (Willard) has protested the Air Force's decision to award a contract for construction of cruise missile engine shipping containers to another bidder. The Air Force used a two-step procurement to award the contract. It is Willard's position that the Air Force failed to explain in step one that it intended to place substantial importance on weight and cube dimensions (as proposed by each bidder in step one) when evaluating the bids under step two.

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Willard believes that this failure requires the Air Force to either award the contract to itself, or re-evaluate the bids received using a different method of evaluation.

On October 17, 1980, the Air Force issued the step one request for technical proposal No. F33700-81-B-0044 (RFTP). The RFTP solicited proposals for the design, development, fabrication, and testing of shipping containers for cruise missile engines. The RFTP noted the importance of minimum weight by stating that the materials used should be of the lightest practicable weight and, in order to facilitate the attainment of minimum weight, the RFTP permitted offerors to propose the use of fiberglass reinforced plastics or other compounded nonmetallic materials. The provisions of the RFTP also requested that the size of the proposed containers be kept to a minimum and that they be compatible with shipment by air or surface transportation.

Among the criteria for acceptability of proposals explained in the RFTP were container design and life cycle costs. As to container design, it was stated that the standard would be met when "the container is of minimum weight and cube." While the standard for life cycle costs made no mention of cube, weight, or method of calculation, in response to a question at the bidders' conference, the life cycle costs factor was amended to provide that the standard would be met when the offeror provided "the following information on his proposed container: weight, cube, life expectancy, and opening/closing times." We note that Willard received and acknowledged the amendment to the solicitation which restated that question and answer in writing.

The step two invitation for bids (IFB) was issued on February 20, 1981. The IFB listed several factors which would be used to determine which bid was the lowest. Under the heading, "evaluation of life cycle costs," the IFB contained a formula which would be used to determine life cycle costs by considering transportation costs and opening and closing labor costs.

When the bids were opened on March 13, 1981, Willard's bid for construction of the shipping containers was the lowest. However, the Air Force then adjusted all of the bids by calculating and adding in the life cycle costs using the above-mentioned formula. For transportation costs, the Air Force applied LOGAIR rates which are more expensive than land transportation rates. When these life cycle costs had been added, Willard's bid became the highest. This was due to the greater weight and cube of Willard's proposed shipping containers as compared to the other proposals. Therefore, on March 31, 1981, the Air Force awarded the contract to one of Willard's competitors and notified the other bidders of the award. On April 3, Willard contacted the Air Force by telegram and requested an explanation of the adjustments for life cycle costs. On April 7, and again on April 10, Willard's vice president discussed the life cycle cost calculations with the Air Force's contracting officer over the phone. On April 13, Willard filed its protest.

Willard contends that it was "the apparent low bidder" and only lost that status by virtue of the Air Force's adjustment of the bids to include life cycle costs. Willard argues that the Air Force did not adequately explain in step one how the life cycle costs would be calculated or that the life cycle costs would ultimately constitute such a large portion of the total cost evaluation. Willard also complains that it received no indication that the Air Force would use LOGAIR shipping rates rather than cheaper surface transportation rates. Willard contends that had it known in step one how the life cycle costs would be computed in step two, its step one technical proposal would have been different.

For these reasons, Willard believes that the contract should be awarded to itself, based on its low step two bid (i.e., without regard to life cycle costs), or the life cycle costs should be recomputed using relatively cheaper surface transportation rates, or that step two bidders be permitted to submit revised container weights.

The Air Force contends that the protest is untimely and otherwise without merit. In particular, the Air Force maintains that Willard knew or should have known of the basis for the protest upon receipt of the step two IFB. The Air Force observes that the IFB clearly stated the formula to be used in evaluating life cycle costs. After the IFB was issued, it was no longer possible for the bidders to alter their technical proposals. The Air Force believes that even if Willard did not realize the importance of the weight and cube dimensions of the proposed containers when it submitted its technical proposal in step one, that fact should have become clear upon examining the IFB, but Willard did not protest until 2 months later.

Willard responds to the Air Force argument with the assertion that the Air Force improperly omitted mention of the step two evaluation criteria from the step one solicitation. In its view, Willard could not possibly know or have reason to know of that omission until after the award was made when the Air Force revealed the omission in response to Willard's questioning.

We conclude that Willard's protest is untimely. Protests based upon improprieties apparent on the face of an invitation must be filed prior to the bid opening date. 4 C.F.R. § 21.2(b)(1) (1981). Assuming that Willard did not understand the importance to the Air Force of producing as light a container as possible in step one, it should have become apparent to Willard upon its examination of the step two IFB that the Air Force intended to evaluate the bids received on the basis of how much each proposed container weighed. The life cycle cost formula was clearly set out. Therefore, Willard knew or should have known of the basis for this protest upon receipt and examination of the step two IFB in February. Since the protest was not received until April 15, 1981, this basis of protest is untimely.

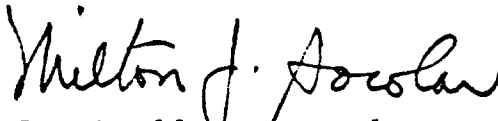
However, two bases of Willard's protest which relate to the method of the life cycle cost comparison are timely since Willard did not learn of the specific factors utilized until after award. These relate to the use in the evaluation of the cube dimensions of

the proposed containers, when the IFB stated that only the weight and opening/closing times would be variables, and the use of LOGAIR rather than cheaper surface transportation.

We find it unnecessary to consider the cube argument because the Air Force has stated that even doing the calculations as desired by Willard (strictly on a weight basis) does not result in Willard displacing the low bidder. Therefore, we find no prejudice to Willard. KET, Inc.- Request for Reconsideration, B-190983, January 12, 1981, 81-1 CPD 17.

We find the Air Force's use of LOGAIR rates reasonable since the RFTP clearly suggested the possibility of shipping by air. Although the RFTP does not specify that the containers will be shipped to their second destinations by air, it does require in section 3.8.3.6 of exhibit "A" that the containers must be "compatible with loading entries and the usable cargo space for C-130 and C-141 aircraft." (The RFTP could not have been any more specific, because the mode for second destination transportation was not determined by the Acquisition Logistics Division until after the RFTP had been issued. The Air Force states that shipping by air was dictated by an upgrading of the program's priority, and all of the bids were evaluated using the same formula. Therefore, we disagree with Willard's allegation that its bid was unfairly evaluated by the use of new or previously undisclosed criteria.

The protest is dismissed in part and denied in part.



**Acting** Comptroller General  
of the United States